



**NOTICE OF DECISION**  
Development Services Department

<b>Project Name</b>	Kumon Learning Center
<b>Request</b>	Authorize the operation of a tutoring center
<b>Discretionary Actions</b>	Minor Use Permit (USE) Coastal Development Permit (CDPNF)
<b>CEQA Determination</b>	Exempt
<b>Recommendation</b>	APPROVED
<b>Project Number(s)</b>	MULTI-005392-2022 USE-005393-2022 CDPNF-005394-2022
<b>DSD Number</b>	2023-22
<b>Location</b>	360 North El Camino Real, Suite 3A
<b>Community</b>	New Encinitas
<b>APN</b>	257-030-56 and -57
<b>Applicant</b>	Ken Johnston, J & C Management Inc.
<b>Representative</b>	Dulce Marie Nang, Kumon Learning Center
<b>Project Planner</b>	J. Dichoso, Senior Planner, AICP <a href="mailto:jdichoso@encinitasca.gov">jdichoso@encinitasca.gov</a>
<b>Hearing Date:</b>	April 25, 2023
<b>Report Approval:</b>	<input checked="" type="checkbox"/> Roy Sapa'u, Director of Development Services

## PROJECT DESCRIPTION

The proposed project will authorize the operation of a tutoring center (Kumon Math and Reading Learning Center) in an approximately 730-square foot (SF) tenant suite within an existing commercial shopping center (Little Oaks Plaza).

Encinitas Municipal Code (EMC) Chapter 30.04 (Definitions – Tutoring Center) states, a “Tutoring Center shall mean any educationally oriented facility that provides personalized academic assistance. The facilities themselves are not schools.” EMC 30.09 (Zoning Use Matrix) requires a Minor Use Permit for a tutoring center in the General Commercial Zone. The project site is zoned General Commercial. Pursuant to the EMC’s definition of a “tutoring center,” the proposed Kumon Math and Reading Learning Center (Kumon) falls under as this land use definition. The requested application regards a Minor Use Permit, the subject of this application.

The proposed project includes the following discretionary actions:

1. Minor Use Permit –

- Authorize a tutoring center use in a 730-square foot commercial suite.
- As part of the Minor Use Permit, the application revokes a previously approved Major Use Permit, which allowed for the sale and consumption of alcohol at a billiard facility at 352 North El Camino Real.

2. Coastal Development Permit –

- The proposed project is located within the Coastal Zone of the City of Encinitas and requires approval of a Coastal Development Permit to determine compliance with the City’s Local Coastal Program.

No exterior architectural modifications are proposed, other than sign installation, and no existing site conditions will be changed as a result of the project.

## PROJECT ANALYSIS

### ***Background***

The Little Oaks Plaza shopping center is located on two contiguous lots that were subdivided as Parcels 1 and 2 of a four-lot subdivision (Parcel Map 2917 dated August 5, 1974, and recorded as File No. 74-211113). The commercial center includes two commercial structures that were constructed in 1978 and 1979, prior to the City’s incorporation in 1986. At the time of construction, the development met all of the applicable land use and zoning standards that were in effect for the County of San Diego

The Little Oaks Plaza is comprised of two adjacent commercial structures as described below.

<b>Lot</b>	Lot 1 of Parcel Map 2917 (dated August 5, 1974) and recorded as File No. 74-211113	Lot 2 of Parcel Map 2917 (dated August 5, 1974) and recorded as File No. 74-211113
<b>APN</b>	259-121-56	259-121-57
<b>Net Area</b>	22,128 SF (0.508 acre)	86,554 SF (1.987 acres)
<b>Building Permit</b>	County Permit No. 2157910 (dated September 10, 1989) for the two-	County Permit No. 1204125 (dated March 6, 1978) for the inline

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	story structure per County of San Diego Commercial Building Record	tenants per County of San Diego Commercial Building Record  City of Encinitas Building Permit Nos. 1992-144 and 1992-145 for eight-foot tall northern and southern gates, (each, respectively dated February 20, 1992). This permit also included approximately 3,798 square feet of storage unit space, to be used by the onsite tenants.
<b>Address</b>	352, 354, 356, and 360 North El Camino Real	362 through 400 North El Camino Real
<b>Use</b>	A 10,241-SF, two-story structure of commercial tenants, which includes the proposed Kumon Learning Center, located in 360 North El Camino Real, Suite 3A.	A 30,590-SF, single-story structure of in-line commercial tenants.

The following previous discretionary actions have taken place for the commercial center:

- New Encinitas Community Advisory Board Resolution No. PC-1992-15 (Case No. 92-088 MUP dated July 16, 1992) authorized a Major Use Permit to allow for the sale and consumption of alcohol at a billiard facility located at 352 North El Camino Real. To date, the address is occupied by Mattress Firm.
- Director of Community Development Decision No. DCD-1995-049 (Case No. 95-055 SIGN dated December 13, 1999) established a sign program for the the Little Oaks Plaza.
- Director of Community Development Decision No. DCD-1999-30 (Case No. 99-008 ADR dated April 6, 1999) authorized the remodel of the front-facing facades of the Little Oaks Plaza commercial center.
- Director of Community Development Decision No. DCD-2002-19 (Case No. 01-288 SIGN/ADR dated February 12, 2022) established a new sign program for the the Little Oaks Plaza, and replaced the 1999 Sign Program described above.

### ***Project Site Characteristics***

The tutoring center is proposed to be located within an 40,831-SF commercial center that was approved prior to the City's incorporation in 1986. The commercial center also includes a storage unit building located at the northwest corner of the site, and a line of storage units (for use by the commercial center tenants) located along the northern property line. The project site has direct access to and from North El Camino Real. Public improvements and utility services are available to serve the site.

The project site is located within the community of New Encinitas, the General Commercial Zone (GC) zone, and the General Commercial General Plan Land Use Designation. The project site is also located in the Coastal Overlay Zone.

Pursuant to Encinitas Municipal Code (EMC) Section 30.08 (Zones), the General Commercial (GC) zone provides a wide range of commercial activities, including retail, wholesale, and service uses, to accommodate Citywide or regional needs.

The table below summarizes the characteristics of the project site:

<b>General Plan</b>	General Commercial (GC)
<b>Specific Plan</b>	None
<b>Zoning District</b>	General Commercial
<b>Zoning Overlay</b>	Coastal Overlay Zone
<b>Other Key City Plan</b>	None
<b>Notable State or Regional Plan and Law</b>	None

### ***Adjacent Area***

The surrounding properties consist of existing commercial shopping centers to the east and south. A mobile home park, Green Valley Mobile Estates, is located west and north of the commercial center. The table below summarizes the characteristics of the adjacent area:

<b>Direction</b>	<b>General Plan and Zoning District</b>	<b>Land Use</b>
North	Mobile Home Park (MHP)/MHP	Green Valley Mobile Estates
South	General Commercial (GC)/GC	Camino Encinitas Plaza
East	General Commercial (GC)/GC	General Commercial Shopping Center (Big Lots and Michael's – Anchor Tenants)
West	Mobile Home Park (MHP)/MHP	Green Valley Mobile Estates

### ***General Plan Consistency***

The City of Encinitas General Plan includes several goals and policies that guide development and land use within the City. A discussion of how the project is consistent with the applicable General Plan policies is summarized below:

<b>General Plan Goal or Policy</b>	<b>Explanation of Project Conformance</b>
<b>Land Use Policy 1.8:</b> Encourage the types of commercial activities, which will supply the community with a diverse economic base.	The project proposes to authorize a Minor Use Permit to allow a tutoring center to operate within the GC zone. The tutoring center will positively contribute to the diversity of the economic base in the community. It will provide a necessary service to students and parents living in the City.

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<b>Land Use Element Policy 6.1:</b> Permit commercial land uses and other types of non-residential development only in those areas where such development presently is concentrated or where indicated by the General Plan as long as such development does not result in land use conflicts with surrounding residential development.	The proposed site is located within an area where commercial land uses are presently concentrated. The project is located within the General Commercial (GC) General Plan Land Use Designation and General Commercial (GC) Zoning District. The GC Zoning District allows for a variety of retail and service commercial-oriented uses. The subject site is developed with an existing commercial shopping center adjacent to other commercial uses (to the east and south) along the El Camino Real corridor. A mobile home park, Green Valley Mobile Estates, is located west and north of the commercial center. The proposed tutoring center will provide an essential service for students and parents living within the proximity of the project site. The proposed use, as conditioned, will not result in land use conflicts with existing commercial or residential developments that surround the site.
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### ***Municipal Code Analysis***

Below is a summary of the project's compliance with the zoning standards:

<b>Development Standards</b>	<b>Existing Project</b>	<b>Complies?</b>
Land Use	<p>EMC Chapter 30.04 (Definitions) defines a "Tutoring Center" as "any educationally oriented facility that provides personalized academic assistance. The facilities themselves are not schools."</p> <p>EMC 30.09 (Zoning Use Matrix) requires a Minor Use Permit for the operation of a tutoring center in the General Commercial Zone. The project site is zoned General Commercial. Pursuant to the EMC's definition of a "tutoring center," the proposed Kumon falls under this land use category, which requires a Minor Use Permit.</p>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

	<b>Lot 1</b>	<b>Lot 2</b>	<b>Complies?</b>
Net Lot Area – 10,000 SF	22,128 SF (0.508 acre)	86,554 SF (1.987 acres)	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Lot Width – 100 feet	157 feet	230 feet	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Lot Depth – 100 feet	149 feet	335 feet	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Lot Coverage – 35 percent	22 percent	39 percent**	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> *
Floor Area Ratio – 1.0	0.46	0.39	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

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Front Yard Setback – 20 feet	30+ feet	25+ feet**	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Side Yard Setback (North) – 10 feet	52+ feet	0 feet**	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> *
Side Yard Setback (South) – 10 feet	27+ feet	22 feet**	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Rear Yard Setback ▪ Zero feet from rear property line	68+ feet	22 feet**	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Building Height – 30 feet	29 feet***	21 feet***	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Parking	See “Minor Use Permit” discussion below.		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
<p><i>*See Legal Nonconformities discussion below.</i></p> <p><i>**As shown on Building Permit No. 1992-144 dated February 20, 1992</i></p> <p><i>***Pursuant to Director of Community Development Decision No. DCD-1999-30 (Case No. 99-008 ADR) dated April 6, 1999 for the remodel of front facing facades</i></p>			

### *Legal Nonconformities*

The development of the commercial center was established on the project site prior to the City's incorporation in 1986, and none of the existing nonconformities are being enlarged or expanded, etc., as a result of this project. In accordance with EMC Section 30.76.050 (Limit on Utilizing Nonconformity – General), the applicant can maintain the existing legal nonconformities so long as the nonconformities are not enlarged, relocated or increased in intensity.

The subject property has the following legal nonconformities that are to be maintained in accordance with EMC Chapter 30.76 (Nonconformities):

- Lot 2 Lot Coverage. The County of San Diego Commercial Building Record shows the inline tenants were constructed in 1978 with County Permit No. 1204125 dated March 6, 1978. The resultant lot coverage was 39 percent lot coverage which exceeds the underlying GC zone's maximum allowable 35 percent lot coverage, and is legal nonconforming.
- Lot 2 Side Yard Setback - The GC zone requires a 10-foot side yard setback. The storage structure on Lot 2 within the commercial center is set on the northern property line with a zero setback. Since the structure was identified with City of Encinitas Building Permit No. 1992-144 dated February 20, 1992, the side yard setback encroachment is legal nonconforming.
- Parking within the front yard setback. EMC Section 30.54.040 (Off-Street Parking Development Standards) references to the requirements in the Off-Street Parking Design Manual to establish various standards related to parking. Off-Street Parking Design Manual Section I.B. (Open Parking) prohibits parking within the 20-foot front yard setback. The site currently provides parking within the front yard setback. Since the parking locations were established when the construction of the building occurred in 1978 prior to the city's incorporation in 1986, the existing parking within the front yard setback is legal nonconforming.

- Parking Supply. EMC Chapter 30.54 (Off-Street Parking) requires a commercial center comprising less than 100,000 square feet to provide 164 parking spaces at a parking standard of one parking space per 250 gross square feet per as demonstrated in the table below:

<b>Gross Floor Area</b>	40,831 SF
<b>Parking Ratio</b>	One parking space/250 SF
<b>Required Parking Spaces</b>	164 (Rounded up from 163.32)*
<b>Current Parking Supply</b>	143 parking spaces
<b>Short Parking Spaces</b>	21 parking spaces
<i>*EMC Section 30.54.020G (General Provisions) states "Where the application of these schedules results in a fractional space, then the fraction shall be rounded to the next higher whole number."</i>	

Therefore, the current parking supply of 143 parking spaces is short 21 spaces from the required 164 parking spaces and is legal nonconforming. A parking study was conducted, as part of the Minor Use Permit request to analyze the available parking supply of the shopping center with the operation of the proposed use. See Parking Study discussion below for additional detail related to parking.

#### *Minor Use Permit*

The purpose of a Minor Use Permit is to review certain land uses or proposed projects, which may involve special site or design requirements, operating characteristics, or may have potential adverse effects on the surrounding area and impose special conditions of approval, as necessary. (The operational characteristics of the facility are discussed in greater detail in the Operational Characteristics and Parking Study section below). The project has been conditioned to ensure that the operation of the facility will not have an adverse impacts on the surrounding area.

EMC Chapter 30.04 (Definitions) states a "Tutoring Center shall mean any educationally oriented facility that provides personalized academic assistance. The facilities themselves are not schools." EMC 30.09 (Zoning Use Matrix) requires a Minor Use Permit for the operation of a tutoring center in the General Commercial Zone. The project site is zoned General Commercial. Pursuant to the EMC's definition of a "tutoring center," the proposed Kumon Math and Reading Learning Center (Kumon) falls as this land use definition and requires a Minor Use Permit.

#### *Operational Characteristics*

The Kumon center is open to the public two days a week; not more than four hours each day. The facility anticipates a maximum of 14 students and four instructors/assistants. Each student (client) is present for only one hour during their tutoring session. Upon arrival, students would complete their tutoring session, then would typically complete the remaining lesson plan at home. Kumon's operation also includes general business/administrative functions including, but not limited to, preparing for consultations with clients, preparing lesson plans, etc.

#### *Parking Requirement*

The commercial center is 40,831 SF. EMC Section 30.54.030 (Schedule of Required Off-Street Parking) allows retail and commercial centers of less than 100,000 square feet to provide parking

at a ratio of one parking space for every 250 square feet of gross floor area. Additionally, it allows for up to eight percent of its gross floor area for restaurants, and up to 15 percent of its gross floor area for medical/dental offices, to be parked at the same parking ratio (1/250). Once the restaurant and medical/dental uses exceed these allowable percentages, the use is required to be parked at the associated ratios for these uses (e.g. 1/100 for restaurant uses and 1/200 for medical/dental uses). The project has been conditioned to clarify this municipal code requirement. See Specific Condition of Approval SCA1 which states:

Any future land uses with a parking ratio greater than one parking space per 250 square feet (1/250) shall be evaluated by the Development Services Department to ensure an adequate parking supply is available onsite for all land uses in the commercial center.

As described in the table below, to date, the existing restaurant and dentist office areas comply with the code section above:

Land Use	Municipal Code Maximum	Area (Percent of Little Oaks Plaza)
Restaurant	3,266 SF (8 percent)	Healthy Creations Café – 1,360 SF (3 percent)
Medical/Dental	6,124 SF (15 percent)	Trang Chesler DDS – 1,330 SF (3 percent)
General Retail	-	Remaining Tenants – 38,141 SF (94 percent)
<b>TOTAL</b>		40,831 SF (100 percent)*
<i>*Differences in area and percentage result from rounding.</i>		

### *Parking Study*

The applicant completed a parking study (dated September 21, 2022). The parking study demonstrated that the existing 143 parking spaces in the commercial center are adequate to serve the needs of the commercial center, with the operation of the tutoring center.

As part of the Parking Study, parking demand counts were completed to demonstrate parking availability, and are summarized in the table below:

Dates	Saturday, 4/2/2022 Saturday, 4/9/2022	Monday, 4/4/2022 Monday 4/11/2022	Wednesday, 4/6/2022 Wednesday, 4/13/2022
Time	12 p.m. to 3 p.m.	2 p.m. to 6 p.m.	2 p.m. to 6 p.m.
Date and Time of Highest Parking Count	Saturday, 4/9/2022	Monday 4/11/2022	Wednesday, 4/13/2022
Highest Parking Count of occupied spaces	47 parking spaces (33 percent)	55 parking spaces (38 percent)	67 parking spaces (47 percent)
Available spaces	96 parking spaces (67 percent)	88 parking spaces (62 percent)	76 parking spaces (53 percent)

Kumon is open no more than four hours of the day and many students are dropped off. The parking demand surveys were completed in three- to four-hour durations, as summarized above, to match their anticipated hours of operation. Based upon the operation of comparable Kumon centers, a maximum of 14 students and four instructors/assistants would be on-site during



operating hours for a total of 18 people, resulting in a need for 12 parking spaces as demonstrated below:

Maximum number of projected students	14
85 percent (Students without siblings)*	11.90 students (14 students x 85 percent)
60 percent (Students with parents that remain onsite)*	8 students (11.90 students x 60 percent - rounded up from 7.14)
Employees/assistants	4
Total parking demand	12 parking spaces (8 students + 4 employees)
*Of the students enrolled, 15 percent would include siblings and 40 percent are students that are dropped off for tutoring and the parents do not remain onsite during the one-hour tutoring session. Based on these assumptions, the parking study projected that a maximum of eight parking spaces would be needed for students/clients.	

With 12 parking spaces, there is an adequate parking supply as demonstrated in the table above. Based upon the parking demand counts, the Kumon tutoring center requires no additional parking because the parking demand of 12 parking spaces never exceeded available parking supply percentages (summarized in the Parking Study table above).

#### Land Use Compatibility

The proposed tutoring center, as conditioned, will be compatible with the surrounding land uses, businesses and structures. The proposed hours of operation are similar, but less than intense, than those of other businesses within the center. The tutoring center is surrounded by other commercial, retail and service-oriented uses that all have varying hours of operations, peak demand times, and general operational characteristics that are typical of a retail shopping center. Additionally, the overall proposed operational characteristics will not negatively impact other surrounding businesses and uses. The tutoring center complements the existing commercial uses within the center and provides a unique service to the community.

#### Minor Use Permit Revocation

The application would also revoke the existing Major Use Permit, which authorized the sale and consumption of alcohol at a billiard facility which was located at 352 North El Camino Real, pursuant to New Encinitas Community Advisory Board Resolution No. PC-1992-15 (Case No. 92-088 MUP) dated July 16, 1992. To date, the address is occupied by Mattress Firm.

The Use Permit may be revoked pursuant to Standard Condition 6 found in the Resolution of Approval which states:

“In the event that any of the conditions of this permit are not satisfied, the Community Development Department shall cause a noticed hearing to be set before the authorized agency to determine whether the City of Encinitas should revoke this permit.”

Because the billiard facility is no longer in operation, and the suite is now occupied by a retail store (Mattress Firm), a noticed public hearing would revoke the Major Use Permit. The outcome of this action would rescind the previously approved Major Use Permit and the authorization for

the consumption of alcohol at that location would be null and void pursuant to Standard Condition A 06.

#### *Design Review Exemption*

Because there is no new exterior construction for a proposed tutoring center, the project is exempt from Design Review per EMC Section 23.08.030 (General Scope and Exemptions).

#### **Local Coastal Program Consistency**

The proposed project is located within the Coastal Zone of the City of Encinitas and requires approval of a Coastal Development Permit for the project. The project adheres to the applicable development standards of the GC Zone provided in the Encinitas Municipal Code and the goals and policies of the General Plan, which ensures consistency with the City's adopted Local Coastal Program.

### **PUBLIC NOTICE AND PARTICIPATION**

#### *Citizen Participation Program*

The applicant submitted a Citizen's Participation Program (CPP) in accordance with EMC Section 23.06. A newsletter was mailed to all owners and tenants within 500 feet of the project site on December 1, 2022. No comments were received.

#### *Public Notice*

The Notice of Pending Action on the Minor Use Permit and Coastal Development Permit was mailed on April 13, 2023 to all property owners within 500 feet of the project site, and to anyone who requested such notice in writing, in compliance with Encinitas Municipal Code Sections 30.01.070 and 30.80.080, and Government Code Sections 65090, 65091 and 65092, as applicable. Additionally, as a courtesy, the notice was posted at City Hall and on the Development Services Department's Internet site under "Public Notices."

#### *Administrative Hearing*

An Administrative Hearing will be held pursuant to Section 30.01.070 (Noticed Public Hearings) of the Municipal Code for consideration of the Minor Use Permit and Coastal Development Permit request on April 25, 2023 at 5 p.m. in the Council Chambers.

### **ENVIRONMENTAL CONSIDERATIONS**

The proposed project includes a minor use permit for the operation of a tutoring center within an existing commercial center, and the revocation of an existing use permit. The project is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines Sections listed below:

- Section 15301 (Existing Facilities) exempts the operation, repair, maintenance, permitting, licensing of private structures, and mechanical equipment, involving negligible or no

expansion of use beyond that existing at the time of the lead agency's determination. The tutoring center use is a permitted land use with an approved Minor Use Permit.

- Section 15061 (b)(3) (Review for Exemption) exempts projects where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The use permit revocation is an administrative action for a billiard facility that is no longer in operation.

The project meets the criteria of the guidelines sections. The project will not impact any historic resources and none of the exceptions in Section 15300.2 exists.

DISCUSSION

The proposed project is in conformance with the General Plan, and Encinitas Municipal Chapters 30.09 (Definitions), 30.20 (Commercial Zones), 30.54 (Off-Street Parking), 30.74 (Use Permit), and 30.80 (Coastal Development Permit). No exterior modifications, additional square footage, or site improvements are proposed as part of this application. The project complies with all applicable development standards of the General Commercial (GC) zone and has demonstrated through a project-specific parking analysis that the existing parking supply within the center is adequate for all the onsite uses and the proposed tutoring center.

The proposed tutoring center is compatible with surrounding buildings, structures and land uses. The project complies with the land use requirements for a tutoring center. Through the Minor Use Permit, the project has been conditioned appropriately to ensure that the proposed use will not have an adverse impact on the surrounding buildings, businesses, land uses and structures.

FINDINGS

Based on findings for a Minor Use Permit per Encinitas Municipal Code Section 30.74.070 (Use Permit) and the aforementioned analysis, the Development Services Department has made the following findings to support the approval, with conditions:

Findings for Minor Use Permit	Explanation of Finding
1. The location, size, design, or operating characteristics of the proposed project will be incompatible with or will adversely affect or will be materially detrimental to adjacent uses, residences, buildings, structures, or natural resources, with consideration given to, but not limited to:	The size, design and operating characteristics of the project will not adversely affect or be materially detrimental to adjacent uses residences, buildings structures, or natural resources. The parking study concluded that the available parking supply of the commercial center can accommodate the tutoring center. Therefore, no impacts to surrounding uses are anticipated as a result of allowing the tutoring center.

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a. The inadequacy of public facilities, services, and utilities to serve the proposed project.	Public facilities, services and utilities are available to serve the existing commercial uses.
b. The unsuitability of the site for the type and intensity of use or development, which is proposed.	Commercial and residential land uses surround the project site. The project site is zoned GC which provides a wide range of commercial activities, including retail, wholesale, and service uses, to accommodate Citywide or regional needs. The tutoring center is consistent with this zoning designation and character of the vicinity and would be maintained with the use permit.
c. The harmful effect, if any, upon environmental quality and natural resources of the city.	The project would not have a harmful effect on environmental quality or natural resources as no physical changes to the project site are being proposed. The site is surrounded by previously developed properties. There are no environmental issues associated with the project. The completion of a parking study is exempt per CEQA Guidelines Sections 15301 – Class 1 (Existing Facilities) and 15601(b)(3).
2. The impacts of the proposed project will adversely affect the policies of the Encinitas General Plan or the provisions of this Code; or	The purpose of a Minor Use Permit is to review certain land uses or proposed projects, which may involve special site or design requirements, operating characteristics, or may have potential adverse effects on the surrounding area and impose special conditions of approval, as necessary. The project complies with the applicable General Plan Policies and applicable standards of the EMC.
3. The project fails to comply with any other regulations, conditions or policies imposed by this Code.	As conditioned, the project would comply with all requirements of the GC zone, and applicable sections of the Encinitas Municipal Code. The project would be subject to all limitations of the project description, new conditions of approval and EMC Chapter 30.54 (Off-Street Parking).

**Based on the findings for a Coastal Development Permit as per Encinitas Municipal Code Section 30.80.090 and the aforementioned analysis, the Development Services Department has made the following findings to support the approval, with conditions:**

Findings for Coastal Development Permit	Explanation of Findings
1. The project is consistent with the certified Local Coastal Program of the City of Encinitas; and	The project conforms to the Municipal Code and policies of the General Plan. No exterior modifications, additional square footage, or site improvements are proposed as a part of this application. The project complies with all applicable development standards for the General Commercial (GC) zone and has demonstrated through a parking analysis that the existing parking supply within the center is adequate for the use.
2. The proposed development conforms with Public Resources Code Section 21000 and following (CEQA) in that there are no feasible mitigation measures or feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment; and	No potentially significant adverse impacts to the environment will result from the project and the project is exempt from environmental review pursuant to CEQA Guidelines Sections 15301 – Class 1 (Existing Facilities) and 15601(b)(3).
3. For projects involving development between the sea or other body of water and the nearest public road, approval shall include a specific finding that such development is in conformity with the public access and public recreation policies of Section 30200 et. seq. of the Coastal Act.	The project site is located on North El Camino Real, which is not between the first public road and the sea. This finding is not applicable.

## CONCLUSION

The proposed Minor Use Permit would authorize operation of a tutoring center (Kumon) within an existing commercial shopping center, and revoke an existing use permit for a billiard facility that is no longer in operation. All of the GC zone development standards would be maintained, including the limitation on the expansion of legal nonconformities. The Development Services Department has determined the Minor Use Permit application to be consistent with all applicable policies of the General Plan and provisions of the Municipal Code. The project, as conditioned, would not have a significant effect on the environment. The operational characteristics of the tutoring center, as well as the associated available parking supply and anticipated parking demand, is compatible with the surrounding commercial land uses, and consistent with the underlying zoning. Public improvements and utility services are available to serve the site. Therefore, the project is approved based upon the aforementioned findings, and subject to the following conditions of approval.

## CONDITIONS OF APPROVAL

### **SPECIFIC CONDITIONS**

**SCA** Prior to the use and reliance on this permit, the following specific conditions shall be completed and/or fulfilled to the satisfaction of the Development Services Department – Planning Division:

1. Any future land uses with a parking ratio greater than One parking space per 250 square feet (1/250) shall be evaluated by the Development Services Department to ensure an adequate parking supply is available onsite for all land uses in the commercial center.
2. Prior to use in reliance of this permit, the applicant shall request to the City and release all Covenants of Real Property associated with New Encinitas Community Advisory Board Resolution No. PC-1992-15 (Case No. 92-088 MUP) dated July 16, 1992 for the sale and consumption of alcohol at at 352 North El Camino Real.

### **STANDARD CONDITIONS**

**CONTACT THE DEVELOPMENT SERVICES DEPARTMENT REGARDING COMPLIANCE WITH THE FOLLOWING CONDITIONS:**

- A 01** **Approval - General:** At any time after two years from the date of this approval, on April 25, 2025 at 5 p.m., or the expiration date of any extension granted in accordance with the Municipal Code, the application shall be deemed expired as of the above date.
- A 02** **Approval – General:** This approval may be appealed to the City Council within 15 calendar days from the date of this approval in accordance with Chapter 1.12 of the Municipal Code.
- A 04** **Approval – General:** This project is conditionally approved as set forth on the application and project drawings and parking survey stamped received by the City on September 21, 2022 consisting of six sheets including Parking Study (Sheets 1/6 through 3/6), Unit Directory (Sheet 4/6), and Site Plans (Sheets 5/6 and 6/6), all designated as approved by the Development Services Director on April 25, 2023 and shall not be altered without express authorization by the Development Services Department.
- A 06** **Approval – General:** All conditions of approval of New Encinitas Community Advisory Board Resolution No. PC-1992-15 (Case No. 92-088 MUP) dated July 16, 1992 shall be deemed null and void.
- A 08** **Approval – General:** Approval of this request shall not waive compliance with any sections of the Municipal Code and all other applicable City regulations in effect at the time of Building Permit issuance unless specifically waived herein.

- A 09      Approval – General:** Prior to any use or issuance of final occupancy of the project site pursuant to this permit, all conditions of approval contained herein shall be completed or secured to the satisfaction of the Development Services Department.
- A 11      Approval – General:** The proposed request *may require* additional permits or approvals from Development Services and other City departments, ***such as Entertainment Establishments and Business Registrations***. Approval of any related permit must be obtained prior to ***initiating the use in reliance on this approval***.
- COV 01      Covenants:** Prior to use in reliance of this permit, the owner shall cause a covenant regarding real property to be recorded. Said covenant shall set forth the terms and conditions of this grant of approval and shall be of a form and content satisfactory to the Development Services Director.
- DF 01      Development Fees:** The applicant shall pay development fees at the established rate. Such fees may include but are not limited to: permit and plan checking fees, water and sewer service fees, school fees, traffic mitigation fees, flood control mitigation fees, park mitigation fees, and fire mitigation, and fire cost recovery fees. **All plan check, permit, and service fees shall be paid in accordance with the table below to the satisfaction of the applicable Department Director or designee.** The applicant is advised to contact the Development Services Department regarding Park Mitigation Fees (Planning Division), Flood Control and Traffic Fees (Engineering Division), applicable School District(s) regarding School Fees (Building Division), Fire Mitigation/Cost Recovery Fees (Fire Department), and the applicable Utility Departments or Districts regarding Water and/or Sewer Fees.

Fee Name	Department/Division	Timing for fee collection <sup>1</sup>
Fire mitigation fee	Fire Prevention	Prior to occupancy release
Fire cost recovery fee	Fire Prevention	Prior to building/fire permit issuance
Flood control mitigation fee	Engineering Division	With grading permit issuance/or prior to final building permit issuance
Inclusionary housing in-lieu fee	Planning Division	Prior to final map recordation or prior to building permit issuance
Parkland acquisition fee	Planning Division	Prior to building permit issuance

ITEM NAME: KUMON LEARNING CENTER  
PROJECT NUMBER: MULTI-005392-2022, USE-005393-2022, AND CDPNF-005394-2022  
APRIL 25, 2023

Parkland development fee	Planning Division	Prior to building permit issuance
Plan check fee	Building, Engineering, Fire Prevention and Planning Divisions	At plan check submittal
Permit fee	Building Division and Engineering Division	At permit issuance
School fees	Building Division	Prior to building permit issuance
Traffic mitigation fee	Engineering Division	Prior to building permit issuance
Water and sewer fee	Engineering Division	Prior to permit issuance
<sup>1</sup> Initiating use in reliance on this approval may apply when no permits required.		

**I 01      Indemnification:** To the maximum extent permitted by law, the Owner(s) shall waive any claims of liability against the City, and shall indemnify, hold harmless and defend the City of Encinitas, and its agents, officers and employees from and against any and all actions, claims, damages, liabilities and/or proceedings arising from: (i) the City's approval of any and all entitlements or permits relating to the project; (ii) any injury to or death of any person, or damage or injury of any kind to property which may arise from or be related to the direct or indirect operations of the Owner(s) or its contractors, subcontractors, agents, employees, or other persons acting on the Owner(s)'s behalf relating to the project; and (iii) the operation of the project.

The Owner(s) agree to execute an indemnity agreement provided by the City prior to **recordation of the Certificate of Compliance** and the Development Services Director, or designee, is hereby authorized to execute the same. The Owner(s) further agree that such indemnification and hold harmless shall include all defense related fees and costs associated with the defense of the City by counsel approved by the City. This indemnification shall not terminate upon expiration of the conditions of approval or completion of the project but shall survive in perpetuity.

**SIGN 01      Signs:** Any signs proposed for this development shall be designed and approved in conformance with Encinitas Municipal Code Chapter 30.60.

### **USE PERMIT**

**USE 01      Use Permit:** At all times during the effective period of this permit, the responsible party shall obtain and maintain in valid force and effect, each and every license and permit required by a governmental agency for the operation of the authorized activity.



ITEM NAME: KUMON LEARNING CENTER  
PROJECT NUMBER: MULTI-005392-2022, USE-005393-2022, AND CDPNF-005394-2022  
APRIL 25, 2023

- USE 02      Use Permit:** In the event that any of the conditions of this permit are not satisfied, the Development Services Department shall cause a noticed hearing to be set before the authorized agency to determine whether the City of Encinitas should revoke this permit.
- USE 03      Use Permit:** Upon a showing of a compelling public necessity and/or upon receipt of any substantial complaint(s) regarding the operation of the business, which is the subject of this permit, the City may, upon proper notification of the owner and/or applicant and acting through the authorized agency, conduct a hearing to determine if the conditions of approval need to be modified or whether the permit should be revoked.
- USE 04      Use Permit:** Nothing in this permit shall relieve the applicant from complying with conditions and regulations generally imposed upon activities similar in nature to the activity authorized by this permit.
- USE 05      Use Permit:** Nothing in this permit shall authorize the applicant to intensify the authorized activity beyond that which is specifically described in this permit.
- USE 07      Use Permit:** Any future modifications to the approved project will be reviewed relative to the findings for substantial conformance with a Use Permit contained in Section 30.74.105 of the Municipal Code. Modifications beyond the scope described therein will require submittal of an amendment to the Use Permit and approval by the authorized agency.

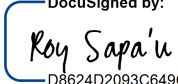
## DISCLOSURES

This notice constitutes a decision of the Development Services Department only for the discretionary entitlement. Additional permits, such as Building and Grading Permits, may be required by the Development Services Department or other City Departments. It is the property owner's and applicant responsibility to obtain all necessary permits required for the type of project proposed.

In accordance with the provisions of Encinitas Municipal Code Chapter 1.12 (Appeals), the decision of the Development Services Department may be appealed to the City Council **within 15 calendar days** of this determination. The appeal must be filed, accompanied by a \$406 filing fee, prior to 5:00 pm on the **15th calendar day** following the date of this Notice of Decision. Any filing of an appeal would suspend this action as well as any processing of permits in reliance thereon in accordance with Encinitas Municipal Code Section 1.12.020(D)(1) until such time as an action is taken on the appeal. **The project site is located within the Coastal Zone.**

ITEM NAME: KUMON LEARNING CENTER  
PROJECT NUMBER: MULTI-005392-2022, USE-005393-2022, AND CDPNF-005394-2022  
APRIL 25, 2023

**SIGNATURE**

DocuSigned by:  
  
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Roy Sapa'u  
Director of Development Services

**Certificate Of Completion**

Envelope Id: 8CFB9F30FFB34E8982E673D09A7F9B24

Status: Completed

Subject: Complete with DocuSign: 005392-2022 MULTI (360 N El Camino Real 3A) 2023-22.docx

Source Envelope:

Document Pages: 18

Signatures: 1

Envelope Originator:

Certificate Pages: 1

Initials: 0

Brayden Davis

AutoNav: Enabled

505 S Vulcan Ave

Envelope Stamping: Enabled

Encinitas, CA 92024

Time Zone: (UTC-08:00) Pacific Time (US &amp; Canada)

bdavis@encinitasca.gov

IP Address: 70.183.94.130

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Holder: Brayden Davis

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Roy Sapa'u

rsapau@encinitasca.gov

Director of Development Services

City of Encinitas

Security Level: Email, Account Authentication  
(None)

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**In Person Signer Events****Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp****Witness Events****Signature****Timestamp****Notary Events****Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

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